

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0867**

Felix Kasper Piah, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 2, 2022
Affirmed
Klaphake, Judge***

Hennepin County District Court
File No. 27-CR-16-2187

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Felix Kasper Piah filed a postconviction petition seeking withdrawal of his guilty plea based on ineffective assistance of counsel. The postconviction court summarily denied relief, and Piah appealed. We determined that Piah's trial counsel performed deficiently, and we remanded for an evidentiary hearing on the issue of prejudice. Following an evidentiary hearing, the postconviction court determined that Piah failed to show the requisite prejudice. Piah now challenges that determination. We affirm.

DECISION

We review a postconviction court's denial of a postconviction petition for an abuse of discretion. *Eason v. State*, 950 N.W.2d 258, 263 (Minn. 2020). A postconviction court abuses its discretion if "its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted). We review the postconviction court's findings of fact for clear error and its legal determinations de novo. *Id.* at 264.

To prevail on an ineffective-assistance-of-counsel claim, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that "a reasonable probability exists that the outcome would have been different but for counsel's errors." *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (quotation omitted).

To satisfy the prejudice prong, Piah needed to show a reasonable probability that he would not have pleaded guilty if he had been properly informed of the consequences of his plea. *See Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Rhodes*, 657 N.W.2d at 842. A reasonable probability is a probability "sufficient to undermine confidence" in the

challenged outcome, in this case, the guilty plea. *Rhodes*, 657 N.W.2d at 842 (quotation omitted).

In determining that Piah suffered no prejudice, the postconviction court relied on a prior motion in which Piah asserted that a conviction “of any kind” would prevent him from obtaining immigration asylum. The postconviction court reasoned that Piah was therefore aware that his plea would make deportation “more likely,” and as such, there was no reasonable probability that he would have changed his decision to plead guilty if properly informed of the plea’s consequences. Piah challenges that reasoning. Indeed, the state declined to endorse the postconviction court’s reasoning and instead raised alternative arguments to support the postconviction court’s conclusion on the prejudice prong.

While the postconviction court’s reliance on the language in Piah’s motion is questionable, the postconviction court’s findings nonetheless support its determination that Piah failed to show the requisite prejudice. We may consider alternative arguments raised by the state on appeal in defense of the postconviction court’s decision when there are sufficient facts in the record to support the arguments, there is legal support for the arguments, and the alternative grounds would not expand the relief granted.¹ *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003); *State v. Bennett*, 867 N.W.2d 539, 543 n.1 (Minn. App. 2015), *rev. denied* (Minn. Oct. 28, 2015).

Piah was the only witness who testified at the evidentiary hearing. He testified that he would not have pleaded guilty if he knew of the increased risk of deportation. The

¹ Piah acknowledges that the state is permitted to raise alternative legal arguments.

postconviction court did not find Piah’s testimony to be credible, and the record supports that credibility determination. *See Bobo v. State*, 860 N.W.2d 681, 684 (Minn. 2015) (stating that we review a postconviction court’s credibility determination for clear error). Piah therefore points to the circumstances surrounding his plea to satisfy his burden on the prejudice prong. “[S]ufficient contemporaneous evidence” may substantiate a defendant’s post hoc assertion that he would not have pleaded guilty if properly informed of the plea’s consequences. *Dat v. United States*, 920 F.3d 1192, 1195 (8th Cir. 2019). However, in this case, the circumstances surrounding the plea indicate that Piah’s decision would not have changed.

Piah entered the United States on a temporary visa, which had expired at the time of his plea. As he concedes, he was therefore “deportable” based upon his immigration status, but he hoped to obtain asylum. *See* 8 U.S.C. § 1227(a)(1)(C)(i) (2018). He pleaded guilty to the misdemeanor charge to avoid a conviction for second-degree assault with a dangerous weapon, which would have rendered asylum an impossibility. *See* 8 U.S.C. §§ 1101(a)(43)(F), 1158(b)(2)(B)(i) (2018). Piah received a general warning about his plea’s immigration consequences, as the plea petition stated that a guilty plea may result in deportation. Although Piah sought plea withdrawal at sentencing, as we noted in our previous opinion, he did not raise immigration consequences as a basis for that plea withdrawal. Given the circumstances surrounding Piah’s plea, including his desire to avoid a conviction on the more serious charge to retain the possibility of asylum, there is no reasonable probability that Piah would not have pleaded guilty.

The postconviction court found Piah's testimony to be not credible, and the record supports that determination. While Piah points to the circumstances surrounding his plea as evidence of prejudice, those circumstances fail to show a reasonable probability that Piah would not have pleaded guilty if he had been informed that his plea would render him presumptively deportable. The postconviction court did not abuse its discretion in denying Piah's petition.

Affirmed.